

Written statement for

The House Select Committee on the Chinese Communist Party

On

***Ensuring U.S. Leadership in the Critical and Emerging Technologies
of the 21st Century***

Oversight of US Investment Into China

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No country seriously competing with another sends it almost \$800 billion over four years. This is the amount of new American investment in the People's Republic of China (PRC) from 2017 through 2020. In 2021, the value of American investment in the PRC dropped, but only because the Chinese government attacked its private sector. American investment in the PRC could have risen sharply in 2022 and 2023 and the US would not yet know, much less have limited the spending in any way. Beyond the raw amount of money, the US does not monitor what's being funded, leaving policy-makers ignorant of the extent of support of potentially dangerous Chinese military and civilian technology.

Trade actions to date, such as tariffs, to confront the PRC for its behavior are not nearly as financially important as this investment flow.¹ And while less dependence on key Chinese materials, from chemical precursors to lithium, is the top economic priority, even this is made more difficult by US financial support of China.

A narrow executive order (EO) that could be in effect for less than a year is not enough. A narrow notification bill with no teeth is not enough. Banning new investment in a few firms is not enough. It's irrational for the same technologies the US tries to control through exports and protects from Chinese acquisition here to be eligible for unlimited American financing. Outbound investment monitoring should be greatly upgraded in order to respond to changes in spending patterns and the US should stop helping the PRC develop advanced technology.

Money Flow Has Changed

The old financial concern with respect to the PRC was its bond holdings. At time of writing, the latest comprehensive data are through June 2022. They show China owning \$1.87 trillion in American stocks and bonds, including nearly \$400 billion through Hong Kong. This was about a \$150 billion drop from June 2021 and the lowest amount since June 2009.²

The combined mainland and Hong Kong share of the American debt held by foreigners was below 12 percent in mid-2022, less than Japan's. Total American debt is unfortunately much higher, so China's share of that is much lower. Monthly data suggest a further drop in the PRC's holding of American bonds since then. The PRC's ownership share of American stocks is tiny. There are indirect purchases through Belgium and the like, but China is not our banker.

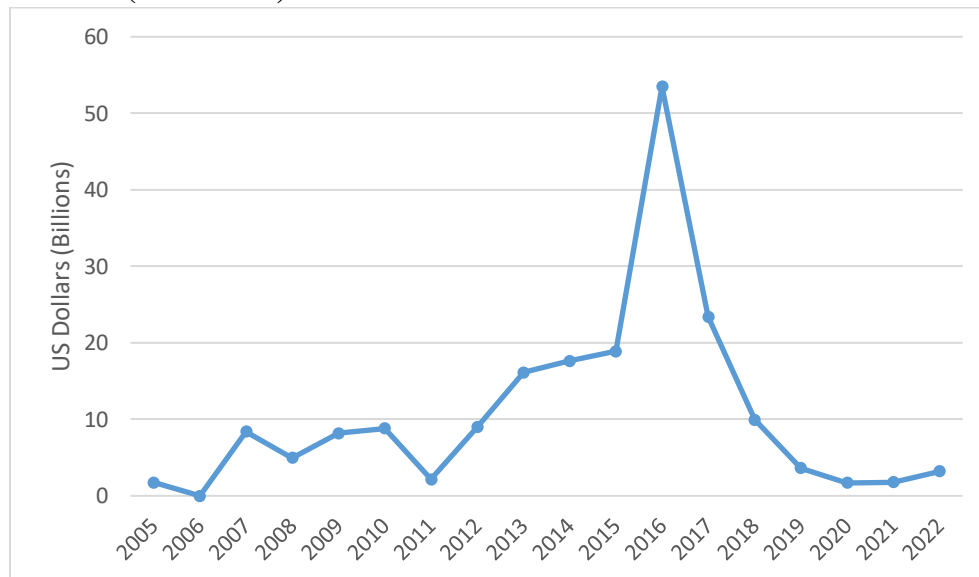
Direct investment - at least 10 percent ownership - by the PRC in the US sees different estimates but is always much smaller than spending on securities. It's also been minor since 2017. The Department of Commerce puts the direct investment position of the mainland and Hong Kong

¹ See the trade section of Derek Scissors, "American Funding of China Is Becoming Dangerous," American Enterprise Institute, December 2, 2020, <https://www.aei.org/research-products/report/american-funding-of-china-is-becoming-dangerous>. The current testimony is based on <https://www.aei.org/wp-content/uploads/2023/05/What-to-Do-About-American-Investment-in-China.pdf?x91208>

² US Department of the Treasury, "Preliminary Report on Foreign Portfolio Holdings of U.S. Securities at End-June 2022," February 28, 2023, <https://ticdata.treasury.gov/resource-center/data-chart-center/tic/Documents/shlprelim.html>. With Xi Jinping ending Hong Kong's autonomy, separation of China and Hong Kong in US data should stop. US Department of the Treasury, "Foreign Holdings of U.S. Securities at the End of the Period Shown," April 28, 2023, <https://ticdata.treasury.gov/resource-center/data-chart-center/tic/Documents/shlhistdat.html>.

combined at \$53 billion at the end of 2021, barely higher than \$51 billion in 2017.³ The China Global Investment Tracker follows PRC money through Hong Kong and offshore centers such as the Cayman Islands to find a much-higher \$193 billion at the end of 2022 (Figure 1). The 2017 figure was \$173 billion, however, which fits both the Department of Commerce’s direct investment trend and the securities side.

Figure 1. Chinese (Non-Bond) Investments in the United States



Source: American Enterprise Institute and Heritage Foundation, China Global Investment Tracker, January 2023, <https://www.aei.org/china-global-investment-tracker>.

In sum, there has been very little new Chinese investment in the US the past few years. Heading the other way, US direct investment in the PRC, including Hong Kong, stood at \$205 billion in 2021 from \$201 billion in 2020. It was \$184 billion in 2017. Again, the past few years have not seen much spending of this kind.⁴

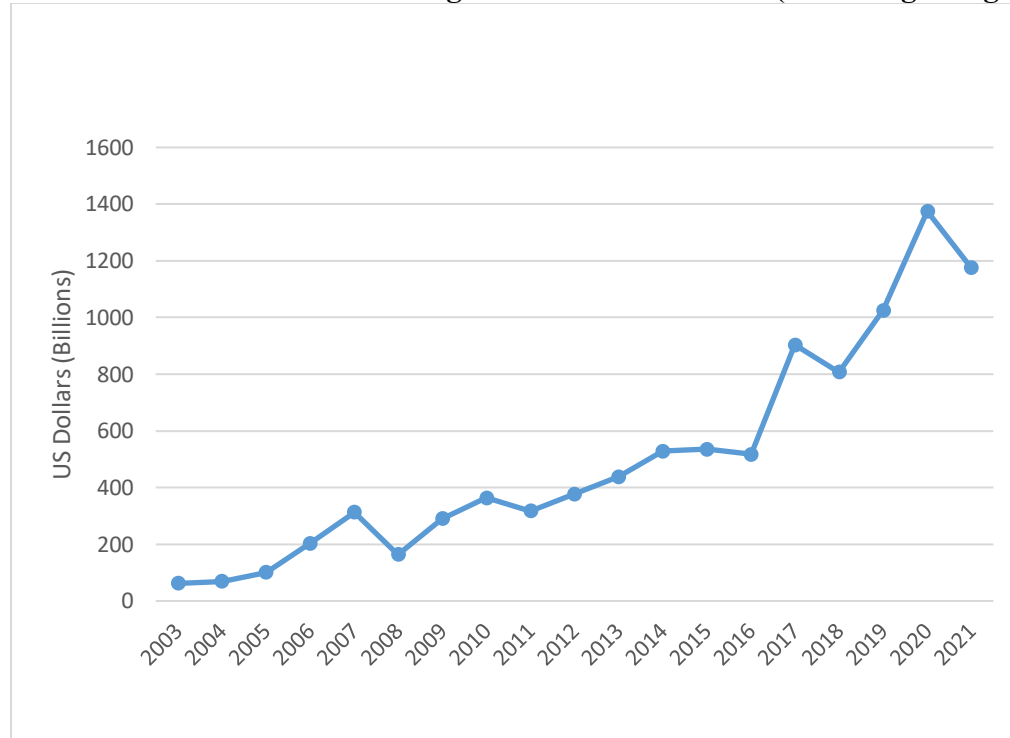
Since the end of 2016, the action has been in American purchases of Chinese securities. This, unfortunately, cannot be found in monthly data published by the Department of the Treasury. The once-a-month figures show the Caymans as the top recipient of US investment in securities, over \$2.5 trillion, even though there is no securities market there. These figures are nonsensical, hiding what American financials are actually doing. Once a year, Treasury bothers with the truth, releasing nationality-corrected data that give the correct numbers for the PRC and others and properly show offshore financial centers as nearly irrelevant.

³ US Department of Commerce, Bureau of Economic Analysis, “Foreign Direct Investment in the U.S.: Balance of Payments and Direct Investment Position Data,” July 21, 2022, <https://www.bea.gov/international/di1fdibal>.

⁴ US Department of Commerce, Bureau of Economic Analysis, “U.S. Direct Investment Abroad, Balance of Payments and Direct Investment Position Data,” July 21, 2022, <https://www.bea.gov/international/di1usdbal>.

Using the right numbers (Figure 2), American securities investment in China and Hong Kong soared \$385 billion in 2017, passing \$900 billion total.⁵ A period of ebb and flow ensued until 2021, the latest year available, when \$1.18 trillion in US funds were held in Chinese securities. This constituted an 18 percent drop from 2020, but that is hardly reassuring. There was no 2021 US government action limiting funds going to the PRC; it's not even clear American investors voluntarily chose to retrench. Alibaba and Tencent had the largest capitalizations among Chinese stocks in 2020. Tencent's share price fell 18 percent in 2021; Alibaba's fell 47 percent.⁶ Americans may have put more money in Chinese securities in 2021, only to have the value fall.

Figure 2. US Residents' Portfolio Holdings of Chinese Securities (Including Hong Kong)



Source: US Department of Treasury, "Securities (C): Annual Cross-U.S. Border Portfolio Holdings," <https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/securities-c-annual-cross-us-border-portfolio-holdings>.

The \$1.18 trillion appears important to the PRC. The State Administration of Foreign Exchange official balance of payments is hard to interpret, with "other" frequently being too important. For portfolio investment and excluding money bouncing back and forth from Hong Kong, the US appears to be by far China's most important partner on the capital side.⁷

⁵ US Department of the Treasury, "Securities C: Annual Cross-Border Portfolio Holdings," <https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/securities-c-annual-cross-us-border-portfolio-holdings>.

⁶ Yahoo Finance, "Alibaba Group Holding Limited (BABA) Stock Historical Prices & Data," https://finance.yahoo.com/quote/BABA/?p=BABA_.

⁷ People's Republic of China, State Administration of Foreign Exchange, "The Time-Series Data of Balance of Payments of China," <https://www.safe.gov.cn/en/2019/0329/1496.html>.

Will Xi, who is increasingly concerned with the PRC's dependence on the world,⁸ continue to accept this? He might. Despite talk of deleveraging, Chinese credit as a share of gross domestic product (GDP) rose nearly 100 points, to 296 percent, in Xi's first 10 years as general secretary. This is 60 points higher than the global average and, as of 2022, headed in the wrong direction.⁹ China needs money. It especially needs money properly allocated. The state-dominated financial system responds to political directives and is largely responsible for the debt surge. An American investment dollar is thus worth more to China than one of its own.

What's the Money Doing?

If \$1.18 trillion in American money for the PRC is a concern, the lack of information about what the funds are supporting is far worse. With Treasury pretending the Caymans are a real market and providing basic data very late, it's hardly a surprise there's no information concerning which PRC industries the US funds. The Department of Commerce is able to do this to some extent for direct investment and, with a delay, for operations of American firms in China.

Though far from ideal, the Commerce data can be used to estimate what Treasury does not provide. Patterns certainly differ for direct and portfolio investment, but direct investment is a reasonable proxy for what firms look for. The direct investment sectors are broad. For American spending in the PRC, the lead recipient is "nonbank holding companies," almost entirely in Hong Kong, which themselves combine activities about which there is no further information. As appropriate when dealing with China, "other" is a key category (Table 1). The top useful category is wholesale trade (purchasing and distribution), followed by nonbank finance, chemicals, and electronics.

Table 1. 2021 Portfolio Investment Estimates, Using Direct Investment (\$, Billions)

Sector	Estimated Amount Received
Nonbank Holding Companies	260
Other Nonmanufacturing	240
Wholesale Trade	170
Nonbank Finance	110
Chemicals	110
Electronics, Featuring Computers	100
Other Manufacturing	100
Transport Equipment	80
Total	1,180

Source: Author's calculations using US Department of Commerce, Bureau of Economic Analysis, "Foreign Direct Investment in the U.S.: Balance of Payments and Direct Investment Position Data," July 21, 2022, <https://www.bea.gov/international/di1fdibal>; and US Department of the Treasury, "Securities C: Annual Cross-

⁸ David Lubin, "Why a More Inward-Looking China Is Bad News for the World Economy," Chatham House, October 17, 2022, <https://www.chathamhouse.org/2022/10/why-more-inward-looking-china-bad-news-world-economy>.

⁹ Bank for International Settlements, "Credit to the Non-Financial Sectors," <https://www.bis.org/statistics/totcredit.htm?m=2669>.

Border Portfolio Holdings,” <https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/securities-c-annual-cross-us-border-portfolio-holdings>.

Another crude estimation technique is to use activity by US firms in the PRC.¹⁰ The idea is that higher profits represent an appealing industry that would draw securities investment. This method suffers from the Commerce suppressing some data because they would identify a particular firm, but has the advantage of not holding companies category (Table 2). There’s also a twist: It’s an obvious practice for Chinese enterprises to try to take sales and profits from multinationals. In this case, they would be taking American securities investment to help them drive out American companies operating in the PRC.

Table 2. 2021 Portfolio Investment Estimates, Using Net Income (\$, Billions)

Sector	Estimated Amount Received
Wholesale Trade	210
Chemicals	180
Electronics, Led by Semiconductors	160
Finance	150
Other Manufacturing	100
Transport Equipment, Mostly Cars and Parts	100
Machinery	90
Retail Trade	80
Total	1,180

Source: Author’s calculations using US Department of Commerce, Bureau of Economic Analysis, International Data: Direct Investment and MNE, <https://apps.bea.gov/iTable/?ReqID=2&step=1>; and US Department of the Treasury, “Securities C: Annual Cross-Border Portfolio Holdings,” <https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/securities-c-annual-cross-us-border-portfolio-holdings>.

These approaches may not generate reliable results. But something beats nothing, and Treasury has nothing. To the extent the results are accurate, the US supports the PRC’s efforts to dominate the global chemical supply chain, causing our dependence in pharmaceuticals. America may be financing the Chinese semiconductor industry. This makes sense because the industry is heavily subsidized and attractive to investors. It’s harmful since the US is trying to subsidize our own semiconductors. The US is probably aiding recent explosive growth in Chinese auto exports.¹¹

As the first step to check all this, Congress should require Treasury to improve data collection and availability. Treasury has failed on transparency through multiple administrations. If the numbers cannot be made public, they must be available to Congress. Good outbound investment policy requires knowing risks and how they change over time. The minimum increases in transparency are:

¹⁰ US Department of Commerce, Bureau of Economic Analysis, International Data: Direct Investment and MNE, <https://apps.bea.gov/iTable/?ReqID=2&step=1>.

¹¹ Xinhua, “Reaching 3.11 Mln Exports, China’s Cars Gain Growing Popularity with Innovations,” February 18, 2023, <https://english.news.cn/20230218/9d78e61d3cf84739b2ad65497e02ea23/c.html>.

- For portfolio investment, the Department of the Treasury provides breakdowns by sector, as specific as possible while protecting individual investors.
- For direct investment, the Department of Commerce provides a nationality correction, so that capital routed through offshore centers and other areas is not counted as truly invested there.

It could also greatly improve policy if:

- For portfolio investment, the Department of the Treasury provides quarterly instead of annual updates of nationality-corrected data, to show the impact of events such as an outbound EO or other policy changes. Otherwise we may make a year-long mistake.
- For portfolio investment, the Department of the Treasury provides a breakdown of total holdings by purchases in initial rights offerings versus secondary market trading.
- For both direct and portfolio investment, the two cabinet departments provide figures on the amount invested in firms facing US sanctions of various kinds.
- For direct and portfolio investment, the two departments provide breakdowns by US state of the investing entity, since state interest in curbing investment in China has soared.¹²

Current Policy Failures

While we claim to be competing, there are two giant holes through which America helps China develop technologies that are potentially vital to winning the competition. The first is our failure to respond to theft of intellectual property (IP). Even if claims of trillions in IP losses are exaggerated, the amount is certainly in the hundreds of billions. American retaliation against PRC beneficiaries of coerced or stolen IP is nearly non-existent, guaranteeing more theft.¹³

Outbound investment is the second. The US attempts to protect technology embedded in goods sales through the export control regime, though the regime has its own problems. For inbound investment, the Committee on Foreign Investment in the United States (CFIUS) has a solid track record in preventing loss of sensitive technology through acquisition here. Yet the same technologies that are controlled in exports or shielded off from acquisition can be developed in China, *with American funding*.

Consider a Chinese entity bidding for an American company developing a useful technology. It is likely to be rebuffed by CFIUS. Then it tries to buy the company's products to reverse-engineer. There's at least a chance this is prevented by export controls. Yet the Chinese entity, often backed by Chinese government guarantees which make investment much more appealing, can freely solicit American money to develop the technology in the PRC. There's no barrier to this at all – CFIUS has no jurisdiction and export controls (contrary to some claims) do not apply. And it's actually the worst outcome, since we are helping China become more self-sufficient.

¹² Steve Bittenbender, "Indiana Senate Passes Bill to Eliminate Pension Investments in Chinese Government," Center Square, March 1, 2023, https://www.thecentersquare.com/indiana/article_1889631e-b876-11ed-988a-0fca5e906362.html.

¹³ Yudhijit Bhattacharjee, "The Daring Ruse that Exposed China's Campaign to Steal American Secrets," New York Times, updated June 15, 2023, <https://www.nytimes.com/2023/03/07/magazine/china-spying-intellectual-property.html>.

At time of writing, the Biden administration's somewhat mythical EO on outbound investment still has not appeared, two years after National Security Adviser Jake Sullivan first raised the matter. It could have taken two months. The administration cannot still be struggling with substance; it can only be struggling with optics. It may be the Biden administration believes its best political bet is to do very little, since the Trump administration's record of soaring American investment in China was so discrediting.

The EO may prove nearly worthless. It could be so narrow as to block only a tiny amount of current investment.¹⁴ The administration might claim it as only a first step, but when a first step takes this long, saying more is coming has little credibility. Implementing regulations for the EO will not appear until 2024 and may be in effect for less than a year. China can continue to offer heavy incentives to invest in technology. Financial institutions can wait the EO out, lobbying to have it expire even if President Biden is reelected (lobbying which may be more effective when reelection no longer matters).

Other administration actions are unimpressive. Chinese firms have failed to meet US disclosure requirements for the entirety of the time they've been listed, yet one audit at the end of 2022 saved them from the first disciplinary action.¹⁵ They will again fail to meet US disclosure requirements, because Chinese law protecting state secrets is far more dangerous to the listed firms than are American regulations.¹⁶ The rule of law has been and continues to be bent, seemingly for the sake of trading income going to New York. This is hardly encouraging for enforcing outbound investment restrictions.

One step further removed are lists of military-linked companies initiated by the Trump administration. No disinvestment has been required;¹⁷ only new investment is barred. Worse, the lists started out far too short and remain so, in light of China's requirement that civilian entities cooperate with the military.¹⁸ Money can still go where the PRC wants it to go, merely using a slightly different set of recipients.

¹⁴ An administrative cost of \$10 million makes this clear. See Susan Heavey, "US Treasury Puts Cost on Outbound Investment Risk Program at \$10 Million," Reuters, March 4, 2023, <https://www.reuters.com/markets/us/us-treasury-puts-cost-outbound-investment-risk-program-10-million-2023-03-04>.

¹⁵ Public Company Accounting Oversight Board, "PCAOB Makes HFCAA Determinations Regarding Mainland China and Hong Kong," December 16, 2021, <https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-makes-hfcaa-determinations-regarding-mainland-china-and-hong-kong>; and Laura He, "Delisting Risks for China Tech Stocks Averted as US Gets 'Historic' Access to Audit Data," CNN Business, December 16, 2022, <https://www.cnn.com/2022/12/16/business/china-stock-us-delisting-averted-audit-access-intl-hnk/index.html>.

¹⁶ Eric T. Schwartz and Colleen P. Mahoney, "SEC Enforcement in the Second Term of the Obama Administration," Harvard Law School Forum on Corporate Governance and Financial Regulation, February 14, 2013, <https://www.skadden.com/-/media/files/publications/2013/02/20130214secenforcementinthesecondtermoftheobamaadm.pdf>.

¹⁷ Zach Coleman, "U.S. Gave Investors 'Green Light' on Blacklisted Chinese Companies," *Nikkei Asia*, June 6, 2022, <https://asia.nikkei.com/Politics/International-relations/US-China-tensions/U.S.-gave-investors-green-light-on-blacklisted-Chinese-companies>.

¹⁸ US Department of Defense, "Entities Identified as Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. ('Mac') Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283)," October 5, 2022, <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF>. In contrast with Xinhua, "Xí jìnpíng: Zhā zhā shí shí tuījìn jūnmín rónghé shēndù fāzhǎn wèi shíxiàn zhōngguómèng qiángjūnmèng tígōng qiángdà dònglì hé zhànlüè zhīchéng" [Xi

Congress's record on outbound investment is threadbare, which is odd. Congress strengthened inbound investment review on an overwhelming bipartisan basis,¹⁹ in large part to prevent technology loss. There has been Congressional interest in limiting technology loss through exports.²⁰ Yet technology development within China can be supported by American money, without limit. Legislators show intense interest in blocking Chinese acquisition of American land. The spending on land is tiny compared to US investment in the PRC.

There is one notable exception. In 2021–22, Congress attempted to address outbound investment through the National Critical Capabilities Defense Act (NCCDA).²¹ It ultimately passed the House but not the Senate. NCCDA was far better than nothing, which is what Congress has produced to date. But it was excessively broad, addressing both supply chains and outbound investment and not specifying levels of technology to be covered. This scope was used as an excuse by opponents, most of whom want to do nothing.²²

Flawed Defenses

American investment in the PRC is unregulated, what's being supported is hidden, and in recent years it's been much larger than flows the other direction. In contrast, Chinese investment in the US is screened, and we see where money goes. By the time Congress strengthened inbound investment review, Chinese investment in the US was dropping due to Beijing's own concerns.²³ Neither drop nor review damaged the American economy. Yet the financial sector insists outbound investment oversight will. This is a mistake.

Some opposition to outbound investment regulation is immediately discredited by opposition to transparency. Some is historically inaccurate. The period of truly open US investment overseas

Jinping: Steadily Promote the Deepening of Civil-Military Integration, Providing Strong Driving Force and Strategic Support for Realizing the Chinese Dream and the Dream of a Strong Army], March 12, 2018, http://www.xinhuanet.com/politics/2018lh/2018-03/12/c_1122526642.htm.

¹⁹ David Mortlock et al., "CFIUS Reform Update: FIRRMA Comes Closer to Passage as House and Senate Versions Undergo Reconciliation," Willkie Farr & Gallagher LLP, July 19, 2018, https://www.willkie.com/-/media/files/publications/2018/07/cfius_reform_update_firma_comes_closer_to_passage_as_house_and_senate_versions_undergo_reconciliation.pdf.

²⁰ US House Committee on Foreign Affairs, "Chairman McCaul Slams Commerce Department for Withholding Documents on Technology Transfers to the CCP, Demands Full Transparency from BIS," January 20, 2023, <https://foreignaffairs.house.gov/press-release/chairman-mccaul-slams-commerce-department-for-withholding-documents-on-technology-transfers-to-the-ccp-demands-full-transparency-from-bis>; and US Senate Committee on Banking, Housing, and Urban Affairs, "Banking Committee Advances CFIUS Legislation," May 22, 2018, <https://www.banking.senate.gov/newsroom/press/banking-committee-advances-cfius-legislation>.

²¹ Robert Casey et al., "Amendment No. 1853: To Require Reviews of United States Investment in Foreign Countries That May Threaten National Critical Capabilities," https://www.casey.senate.gov/imo/media/doc/casey-cornyn_nccda_amendment.pdf.

²² China-US Business Council, "USCBC Views on the Make It in America Act (Previously USICA) and America Competes Act," March 9, 2022, <https://www.uschina.org/advocacy/regulatory-comments-on-china/uscbc-views-make-it-america-act-previously-usica-and-america-competes-act>.

²³ Reuters, "China to Curb Risks from 'Irrational' Outbound Investment, Xinhua Says," December 6, 2016, <https://www.reuters.com/article/china-economy-forex/china-to-curb-risks-from-irrational-outbound-investment-xinhua-says-idUSL4N1E141H>; and Xinhua, "China Releases New Rules to Regulate Outbound Investment," December 26, 2017, http://www.xinhuanet.com/english/2017-12/26/c_136853157.htm.

begins in 1971, as dollar liquidity was managed under the gold standard. The Soviet bloc was still excluded through the 1980s. Globally open investment is three decades old, emerging because the US had no dangerous rivals. Now we do.

Those dismissing the rivalry with China are not concerned with American national interest. But what about the other side of the ledger - how much could outbound investment review cost? The \$1.18 trillion in Chinese stocks and bonds through 2021 chased returns unavailable elsewhere. Most investment occurred in 2017–20, indicating this as the best time to invest in the PRC, when review would have caused the most loss. The annual average S&P 500 return for the period is near 15 percent.²⁴ Setting a China return at 25 percent to illustrate, sticking to the S&P would have cost below \$22 billion annually. (In 2021, Alibaba's market capitalization fell \$315 billion.)

Direct investment is smaller and does not have a recent increase to focus on. During 2017-2020, it would add possibly \$2 billion to annual losses. Annual losses to US investors from a China ban are this \$24 billion, which is less than 1/5,000th of annual household net worth.²⁵ This is just an illustration but it's a full ban at the time of peak investment.

Realistic costs are far less. Treasury forces us to guess about allocation. It appears a sweeping definition of "critical industry" encompasses only half of investment volume, cutting 2017–20 losses to under \$12 billion annually. It's likely that some investment in vague categories such as "other manufacturing" is also not sensitive, pushing the number still lower. Starting with a narrower set of technology restrictions, annual loss is in the neighborhood of \$4 billion.

American GDP passed \$25 trillion in 2022; net wealth was five times that. The cost of restricting investment in China is dwarfed by the military and economic risks of boosting Xi. If disclosure shows little sensitive investment, potential losses from restrictions are tiny. If dangerous investment is larger, restrictions will pay for themselves many times over in protecting American prosperity, security, and values.

Policy Solutions

No EO, from any administration on any issue, is a solution. It's always a Band-Aid, useful only for a short time. The many months of delays and painstaking attempts to downgrade expectations for the Biden administration outbound investment EO²⁶ indicate it will cover very little. There is no justification for the EO delay, the issue is not complex. Investment details do not matter in this case; all that matters is the amount of money -- delivered in any way -- supporting unwanted Chinese technology development. The first question to ask when the EO finally appears is how much money would it have covered in, say, 2020? Treasury will likely refuse to answer.

²⁴ Macrotrends, "S&P 500 Historical Annual Returns," <https://www.macrotrends.net/2526/sp-500-historical-annual-returns>.

²⁵ Federal Reserve Bank of St. Louis, Gross Domestic Product, <https://fred.stlouisfed.org/series/GDP>; and Board of Governors of the Federal Reserve System, "Financial Accounts of the United States: Front Matter," September 9, 2022, https://www.federalreserve.gov/releases/z1/20220909/html/introductory_text.htm.

²⁶ Christopher Condon, "Yellen Says US Investment Curbs Won't 'Fundamentally' Hurt China," Bloomberg, July 17, 2023, <https://www.bloomberg.com/news/articles/2023-07-17/yellen-says-us-investment-curbs-won-t-fundamentally-hurt-china?sref=bWSPFsy2>

The solution is enduring legislation. The first component is mandating much greater transparency, along lines set out above. The reaction to making capital flows more transparent will clarify who genuinely supports open markets - opposing transparency is not protecting any long-standing American principles. With regard to transparency and all policy steps, routing money to China through offshore financial centers must be treated the same as investing directly. Private equity must be treated the same as other forms of investment. This also applies to investing in other countries of concern Congress identifies, such as Iran.

Beyond disclosure requirements, the core of investment review is what transactions should be covered. One idea is reversing CFIUS; covered outbound transactions parallel those covered by CFIUS. This is too simple, since CFIUS protection of military facilities and citizen privacy does not apply in outbound investment. The technology aspect does apply. When a transaction in the US would be mitigated or blocked due to potential technology loss to China, American money should not be allowed to help China develop that technology

CFIUS reform passed in 2018. If technology guidance laid out then should be updated, that can certainly be part of outbound investment legislation. While technology guidance could instead be drawn from export controls, the Bureau of Industry and Security simply ignored the mandate to control foundational technology exports.²⁷ It would further risk legislative authority to rely on controls as administered by an executive agency that has defied congressional intent.

NCCDA itself would have broadened CFIUS's coverage, which was risky since the US has no experience regulating outbound investment. If Congress wants narrower restrictions on outbound investment than inbound, it can create a new coverage list. Existing options address technology. In 2021, the Office of the Director of National Intelligence named, as priorities for American strategic superiority, artificial intelligence and autonomous systems, the bioeconomy, quantum computing, and semiconductors.²⁸ "Bioeconomy" should be more specific, but this is otherwise a sound list. The 2022 White House view of critical technologies overreached, and overused the word "advanced."²⁹

A vital aspect of covered transactions is fungibility of money. While the sectors covered should be narrow, firms cannot be. It's not reasonable to claim a company pursuing covered technology, say quantum computing, can be supported by American money because it's also involved in uncovered activities. Funds will not stay in the "good area." The same applies to Beijing's ability to re-designate sector leaders, especially in emerging (for China) technology. This has already

²⁷ US Department of Commerce, Bureau of Industry and Security, "Commerce Control List: Controls on Certain Marine Toxins," *Federal Register* 87, no. 99 (May 23, 2022): 28332–43, <https://www.federalregister.gov/documents/2022/05/23/2022-10907/commerce-control-list-controls-on-certain-marine-toxins>.

²⁸ US Office of the Director of National Intelligence, National Counterintelligence and Security Center, "Protecting Critical and Emerging U.S. Technologies from Foreign Threats," October 2021, https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/FINAL_NCSC_Emerging%20Technologies_Factsheet_10_22_2021.pdf.

²⁹ White House, National Science and Technology Council, "Critical and Emerging Technologies List Update," February 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/02/02-2022-Critical-and-Emerging-Technologies-List-Update.pdf>.

been seen with PRC chip-makers.³⁰ American policy cannot target individual firms, they will just be replaced. There is no such thing as a “good” PRC company that can be trusted in technology development. They can be made an arm of the state at a moment’s notice, with no recourse.

The third indispensable element is enforcement. Early in Biden administration consideration of outbound investment, Treasury floated a proposal to do effectively nothing— and thus hardly needed enforcement.³¹ Along with Treasury not providing needed information, this is disturbing. Given the regulator’s obvious reluctance, congressional enforcement provisions should be strict.

All American investors in the PRC or in offshore-registered PRC entities should be required to report amounts, their sector designations for the investment, names of Chinese counterparties, and public information available on counterparty business and investment profiles including affiliates. If a Chinese counterparty or affiliates participate in sectors or technologies Congress chooses to protect, investing in them should be punished financially according to the amount spent. A pattern of this behavior should be seen as criminal. It would be better to have a narrower scope of application and stricter enforcement; Chinese incentives will easily outmatch the kind of weak oversight Treasury seems to prefer.

In sum, durable legislation should (i) greatly improve the transparency of outward investment; (ii) treat all investment the same way; (iii) target technologies, not companies; and (iv) strictly enforce restrictions.

³⁰ Masha Borak, “Chinese chip maker Tsinghua Unigroup faces bankruptcy restructuring after creditor takes it to court,” *South China Morning Post*, July 11, 2021, <https://www.scmp.com/tech/tech-trends/article/3140678/chinese-chip-maker-tsinghua-unigroup-faces-bankruptcy>

³¹ Jenny Leonard, “New Rules for U.S. Investments in China Face Fresh Hurdle: Biden’s Team,” *Bloomberg*, April 29, 2022, <https://www.bloomberg.com/news/articles/2022-04-29/biden-team-splits-on-new-rules-for-u-s-investments-in-china?sref=bWSPFsy2>.